

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil
Case No. 16/3996 SC/CIVL

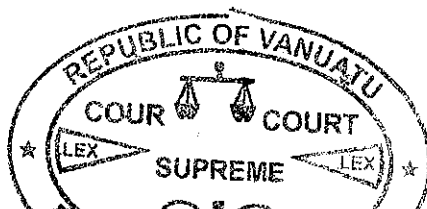
BETWEEN: **Joses Moses Tallis**
Claimant

AND: **Jean Yves Maleb**
Defendant

Date: 6th July 2020 @ 8:00AM
Before: Chief Justice Lunabek
In Attendance: Claimant not present but formerly represented by Mr Saling Stephens (deceased)
Mr James Tari for the Defendant

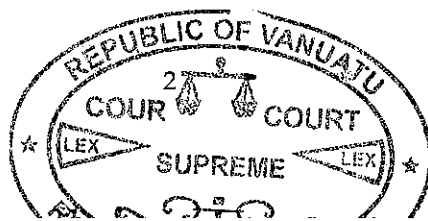
ORAL RULING

1. Mr James Tari applies for the Court to strike out the claim upon two (2) basis.
2. The first is that the Claimant did no longer pursue with his claim since Mr Saling Stephens who was counsel for the Claimant died for more than one (1) year and the Claimant did not take the steps to prosecute his claim pursuant to Rule 9.10(2)(d) of the Civil Procedure Rules (CPR).
3. The second is that the proceeding will be struck out pursuant to Section 3(1)(d)(i) of the Limitation Act [CAP. 112]. Mr Tari said the defendant raised in the defence the claim for damages arising out from personal injuries accident. The accident happened on 18 January 2011. The claim was filed 15 December 2016. This is more than 3 years to pursue the claim of this type. The claim should have been filed within 3 years of the accrued action. This is more than 3 years. The claim is therefore, statute-barred by virtue of Sections 3(1)(d)(i) of the Limitation Act.
4. I now consider these two (2) points.
5. First Point – The application of Rule 9.10(2)(d) of the Civil Procedure rule (CPR) is refused for the reasons set below. In this case the claim and sworn statements were



filed and served on the Defendant. A Defence and sworn statements were also filed. Trial fees were also paid. The matter was listed for trial in 2017 and 2018. This did not eventuate. Pre-trial conferences were set in June 2020 with an attempt to set a trial date. The Notice of the Conference was issued and served not on the claimant personally but through one Jack Tallis, I am informed is the son of the Claimant (email exchanged between Evelyne Sawia/Jack Tallis dated 24 June 2020]. The Court directed the Claimant to find another lawyer to represent him in the trial. The matter was listed in 2020 for pre-trial to find a date for the trial. The claimant was not present. The issue for the Claimant is to find himself a lawyer to represent him in court or to appear himself in court to prosecute his case. Rule 9.10(2)(d) is not applicable to the situation described above as steps were taken apart from setting a date and time for trial. I refuse to strike out the claim/proceeding under Rule 9.10(2)(d) of the CPR as requested by Mr Tari.

6. Second point – Mr Tari on behalf of the Defendant also argued that the limitation point was raised by the Defendant in his defence. He says the nature of the claim is for damages arising out of personal injuries claim as a result of an accident. The accident happened on 18 January 2011. The claim was filed on 11 December 2016. It is more than 3 years period and an action of this type could no longer be pursued. The actions complained of by the Claimant in this case is directly under Section 3(1)(d)(i) of the Limitation Act [CAP. 112].
7. I note that it was difficult to contact the Claimant, Mr Joses Moses Tallis. I also note that the Claimant was represented by Mr Saling Stephens (deceased). On 24 June 2020, a conference was held. The claimant did not attend nor represented. Mr James Tari appeared on behalf of the Defendant. In the Minutes issued by the Court dated 24 June 2020, it is directed that the next conference date was on 6 July 2020 at 8:00am. The notice of next conference was to be served on the Claimant personally. The Claimant has to find a lawyer before the conference of 6 July 2020.
8. Since, it is difficult to serve Mr Joses Moses Tallis, I instructed the Chief Justice's secretary (Evelyne Sawia) to inform a close relative of the claimant of the orders issued by the Court on 24 June 2020 to inform the Claimant or his close relative of the Notice of Conference of 6 July 2020.
9. Today, 6 July 2020, I bear in mind that there is no lawyer appearing on behalf of the Claimant. I saw the copy of the email sent by Mrs Evelyne Sawia to one Jack Joses Tallis (Claimant's son) dated 24 June 2020 at 5:08pm referring to a phone conversation Evelyne/Jack Joses Tallis had about the orders issued by the Court and the actions to be taken by the Claimant. No one appears. I do not have information



whether the Claimant was informed or was aware of the conference hearing on 6 July 2020 at 8:00am.

10. Despite the above situations, in particular paragraphs 6, 7, 8 and 9 above, I hear and consider Mr Tari's submissions made pursuant to Section 3(1)(d)(i) of the Limitation Act. I do this on the basis, that if I am satisfied, as a matter of law that, Mr Tari's submissions on Section 3(1)(d)(i) of the Limitation Act is right, then there will be not need for a trial and the matter must be put at rest as the actions intended by the Claimant in his claim in Civil Case No. 16/3996 was statute-barred. It will best to stop the case there and then and to save the extra wasted costs on all parties and specifically the Claimant.

11. Section 3(1)(d)(i) of the Limitation Act states:-

"3. Limitation of actions of contract and tort and certain actions

(1) *The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say –*

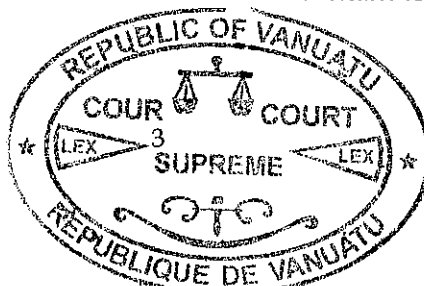
- (a) *actions founded on simple contract or on tort;*
- (b) *actions to enforce a recognizance;*
- (c) *actions to enforce an award, where the submissions is not by an instrument under seal;*
- (d) *actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture.*

Provided that –

- (i) *in case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years;*

(my emphasis)

12. I apply Section 3(1)(d)(i) in this case on the situation of this case. The damages claim arose out of an accident said to occur on 18 January 2011. The Supreme Court claim in this case was filed on 15 December 2016. This was more than 3 years when the claim for damages was filed. The claim should have been filed within 3 years limitation period under Section 3(1)(d)(i). It was not the case. The claim was filed more than 3 years after the action complained of accrued. The claim is statute barred. It must be struck out.



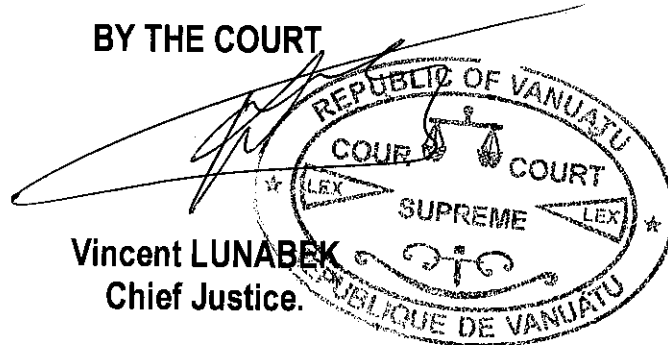
13. The Court makes the following orders:

ORDERS

14. The proceeding in Civil Case no. 16/3996 between Joses Moses Tallis and Jean Yves Maleb is struck out as the claim for damages of injuries sustained are statute barred.
15. The Defendant is entitled to his costs assessed at VT50,000 against the Claimant;
16. Such costs of VT50,000 shall be paid by the Claimant to the Defendant within 30 days from the date of this ruling ie. 6 August 2020.
17. An enforcement conference is set on Friday 7 August 2020 at 8:00am to check whether the costs are paid within 6 August 2020 or how the Claimant intends to pay the costs.

DATED at Port Vila, this 6th day of July, 2020

BY THE COURT



**Vincent LUNABEK
Chief Justice.**